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ABSTRACT

An attempt to provide ready access to publications dealing with the controversy over American Indian fishing and hunting rights, this annotated bibliography includes 37 citations (law journals, books, government documents, and other publications excluding newspapers and court cases). The earliest citation is a 1915 speech to the Washington Legislature defending the fishing/hunting rights of the Native Americans of Tulalip Agency, and the most recent citations are 1975 citations. (JC)

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NATIVE AMERICAN FISHING/HUNTING RIGHTS: AN ANNOTATED BIBLIOGRAPHY

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NATIVE AMERICANS FISHING/HUNTING RIGHTS: AN ANNOTATED BIBLIOGRAPHY

The controversy over Native American fishing/hunting rights, particularly off-reservation rights, has been long and heated, and continues unabated today, especially in the Pacific Northwest. From the middle 1800's to the present, Native Americans have had to fight to obtain and maintain rights supposedly guaranteed by treaty. The body of case law is voluminous; yet it was not until this year, 1976, that off-reservation fishing rights were judicially affirmed. On January 26, 1976 the U.S. Supreme Court denied the State of Washington's petition for review of the "Boldt Decision" of February 12, 1974 (U.S. v. State of Washington, 384 F. Supp. 312). By upholding the Boldt Decision the U.S. Supreme Court finally recognized, albeit indirectly, the fishing/hunting rights of

Native Americans guaranteed by treaty.

While the court decisions have at last recognized Native American fishing/hunting rights, the controversy has not ended. As late as October of the year news stories reported continuing violence between whites and Native Americans over fishing/hunting rights. The literature concerning this smoldering controversy is widely scattered and appears in a number of formats (e.g. books, journals, government documents, newspapers, etc.). As a result much of the material is time consuming to locate, difficult to retrieve, and therefore, essentially inaccessible. This bibliography is an attempt to provide ready access to the publications dealing with this controversy.

After a careful reading of the literature concerning the fishing/hunting rights dispute, it is clear that Native Americans have been, and continue to be used as scapegoats by the majority population. The reduction in salmon and steelhead populations which has occured in the last 50-60 years is the direct result of environmental change induced by non-Indians. However, the majority population, rather than accept responsibility for such a catastrophe has not only attempted to foist blame upon Native Americans, but has also attempted to usurp the Native American's share of fish and game which remains. It is my hope

that dissemination of such information, via this bibliography, will result in increased support for Native American fishing/hunting rights, particularly among the majority population.

As indicated above, many articles concerning the fishing/hunting rights conflict appeared in newspapers, both traditional and Native American. It was impossible to include such articles in this bibliography. While certainly of informational value, newspapers often tend to lack substantive value; this coupled with the large number of news articles and the lack of suitable indexes precluded their inclusion in this bibliography. In the same vein citations to court cases have also been excluded. If one is in need of case citations it is suggested that she/he consult the Indian Law Reporter for cases initiated in 1974 or later. Copies of material referred to in the Indian Law Reporter may be obtained from the National Indian Law Library (NILL) in Boulder, Colorado. Requests for such material should include the NILL accession number which is provided in the Indian Law Reporter. For citations to cases which appeared before 1974 it is suggested that one consult the law review articles which appear in this bibliography.

Finally, while many bibliographies attempt to be comprehensive, most fail to some degree. The compiler welcomes correspondence from any individual with suggestions for citations which should have been, but were not included in the bibliography.

American Friends Service Committee
1968 An Uncommon Controversy: an Inquiry into the Treaty-Protected Fishing rights of the Tribes of the Northwest Coast. National Congress of American Indians.

Represents an earlier edition of the citation below. Provides some statistics which do not appear in the 1970 edition.

American Friends Service Committee
1970 Uncommon Controversy: Fishing Rights of the Muckleshoot, Puyallup, and Nisqually Indians. Seattle: University of Washington Press.

Provides a brief description of aboriginal life, and chronicles the appearance of Europeans among the Pacific Northwest tribes. Includes a detailed discussion of the various treaties upon which Native American fishing rights are based. Documents the inconsistency of U.S. Indian policy from the middle 1800's to the present, and debates the impact of the various policies on fishing rights. Furnishes a detailed investigation of the legal status of contemporary Native American fishing rights in the state of Washington, both on and off the reservation. Examines the position of Native Americans, state agencies and federal agencies concerning the dispute. Supplies data on the ecology of salmon and steelhead, and documents the reasons for the decline in their populations. While most of the participants in, and the literature about the dispute focus on the conservation issue of Native American fishing, the AFSC contends that the

"... conservation issue has served to cloud the real issue, which is difference - cultural difference." The tremendous reduction in salmon and steelhead populations which has occured in the last 50-60 years is the result, not of Native American fishing, but rather is the result of environmental change induced by non-Indians. However, because Native Americans preceive fishing differently than whites, because Native Americans' methods of taking fish differs from whites' methods, and because Native Americans lack a political base, the Native Americans have been made a scapegoat. "Hostility rises from the threat presented by the differences, not from danger to the fish. Most of the literature concerning the controversy addresses but one issue, the legality of Native American fishing rights; this work, however, investigates the social, economic, philosophical, and legal issues. While now five years old, this volume still serves as the definitive study of the conflict over Native American fishing rights in the Pacific Northwest.

Anderson, Owen L.
1972 Indians - Hunting and Fishing Rights - State Law Must Yield to Federal Treaty. North Dakota Law Review 48:729-737.

Examines the case of the People v. Jondreau (384 Mich. 539), and places it in relation to similar cases concerning Native

American fishing/hunting rights. In addition, cases which illustrate the absolute, indispensible, reasonable, and necessary tests utilized in the interpretation of treaty rights are briefly examined.

Anonymous
1967 Confederated Tribes of Umatilla Indian Reservation v. Maison, 262 F. Supp. 871. International Lawyer 1:705.

unavailable for annotation.

Anonymous
1968 Regulation of Treaty Indian Fishing. Washington Law Review 43:670-683.

Provides an historical analysis of the legal decisions bearing on Native American off-reservation fishing. Examines the four rules, absolute, indispensible, reasonable, and necessary, which have been employed to determine the degree to which states may regulate off-reservation fishing.

Anonymous
1972 Indian Law - State Regulation - Hunting and Fishing Rights. New York Law Forum 18:442-450.

Examines the basis for the decision reached in the case of the Leech Lake Band of the Chippewa Indians v. Herbst (334 F. Supp. 1001). Reprinted in the American Indian Law Review 1:79-88.

Achenbrenner, Peter J.
1971 State Power and the Indian Treaty Right to Fish. California Law Review 59:485-524.

Examines and attempts to define the original purpose of treaty fishing provisions. Summarizes Congressional and U.S. Supreme Court response to state reluctance to recognize treaty guaranteed fishing rights. Investigates the relationship between state governments and Native American fishermen in the Pacific Northwest. Analyzes the "... problems of judicial posture inherent in administering the fairest solution to the fishing dilemma." Concludes that a final solution to the problem should be based on Native American economic security "... which is the underlying purpose of the treaty provisions."

Baenen, James A.
1965 Hunting and Fishing Rights of the Nez Perce Indians: a Chapter in Recent Ethnohistory. MA thesis, Washington State University, Pullman.

Describes Nez Perce hunting and fishing patterns during the early 1800's. Discusses the treaty entered into by the Nez Perce and Isaac Stevens in 1855, upon which Nez Perce fishing/hunting rights are based. Suggests that the main factor in the conflict over Native American fishing/hunting rights is not the question of conservation, but rather the question of cultural difference. Concludes that the problem of Nez Perce fishing/

hunting rights is but a symptom of the poor Native American-white relations which existed at the time the research was undertaken.

Bean, Jerry
1974 Off-Reservation Hunting and Fishing Rights: Scales Tip In Favor of States and Sportsmen? North Dakota Law Review 51:11-30.

Attempts to analyze the case law bearing on Native American fishing/hunting rights, and offers suggestions for the development of "... a reasoned judicial posture for future off-reservation game controversies." The author contends that judicial abdication of responsibility "... is revealed in the failure to carefully reason where states get the power to regulate treaty rights." Suggests that this abdication of responsibility must end if there is to be an end to the controversy and the accompanying litigation.

Benoliel, Joel
1971 SoHappy: Aftermath and Alternatives. Paper from the Indian Legal Problems Seminar, University of Washington School of Law.

Available via interlibrary loan from the University of Washington Law Library, or from Professor Ralph Johnson (address: U of W School of Law, mail stop: JB-20, Seattle, WA 98105) for 6¢ per page.

Buchanan, Charles
1915 Rights of the Puget Sound Indians to Game and Fish. Washington Historical Quarterly 6:109-118.

Represents the text of a speech to the Washington Legislature defending the fishing/hunting rights of the Native Americans of the Tulalip Agency. Provides citations to early court cases dealing with Native American fishing/hunting rights.

Burnett, Donald L. Jr.
1970 Indian Hunting, Fishing, and Trapping Rights: the Record and the Controversy. Idaho Law Review 7:49-75.

Briefly outlines the legal history of the controversy over Native American fishing/hunting rights. Reviews the legal basis for federal and state regulation of both on- and off-reservation fishing and hunting. Provides a summary of court cases involved in the conflict.

Cumming, Peter A. and Kevin Aalto
1974 Inuit Hunting Rights in the Northwest Territories. Saskatchewan Law Review 38:251-323.

Discusses the cultural importance of hunting to the Inuit (Eskimo). Examines the present attitude of the Canadian government to Native American and Inuit hunting rights. Provides a detailed historical survey of game legislation in the Northwest Territories; studies the legal effect of such legislation on Inuit hunting rights.

Finnigan, Richard A.
1975 Indian Treaty Analysis and Off-Reservation Fishing Rights: a Case Study. Washington Law Review 51:61-95.

Examines the Boldt decision (U.S. v. Washington, 384 F. Supp 312) as well as the factors involved in, and the legal history of the interpretation of Native American treaties as they pertain to off-reservation activites. Also provides a very brief history of the controversy over Native American fishing rights in the Pacific Northwest.

Frizzell, Kent
1974 Legal Opinion Regarding the Boundaries of and Status of Title to Certain Lands within the Colville and Spokane Indian Reservations. Indian Law Reporter 1(8):20-43.

The solicitor of the Department of the Interior is of the opinion that the Colville and Spokane Tribes hold title to portions of Lake Roosevelt Reservoir and may regulate the hunting and fishing of non-Indians on the lake.

Hobbs, Charles A.
1964 Indian Hunting and Fishing Rights. George Washington Law Review 32:504-532.

Attempts to collect and categorize the position of all authorities on the topic of Native American fishing/hunting rights. Provides an historical overview of the common law principles of fishing and hunting. Discusses Native American

fishing/hunting rights and the federal, state, and tribal regulation of those rights, both on and off the reservation.

Hobbs, Charles A.
1969 Indian Hunting and Fishing Rights II. George Washington Law Review 37:1251-1273.

Discusses the decision of the U.S. Supreme Court in Puyallup v. Department of Game (391 U.S. 392) and Menominee Tribe v. United States (391 U.S. 414). Provides an historical background of the dispute over regulation of off-reservation Native American fishing. Summarizes the legal basis for the regulation of off-reservation fishing; identifies groups which may excercise regulatory power. An excellent discussion of Puyallup and Menominee fishing/hunting rights as well as a valuable overview of the legal situation in 1969.

Holte, Scott H.
1974 United States v. Washington: a Unique Kettle of Fish. paper from the Indian Legal Problems Seminar, University of Washington School of Law.

Available via interlibrary loan from the University of Washington Law Library, or from Professor Ralph Johnson (address: U of W School of Law, mail stop: JB -20, Seattle Wa. 98105) for 6¢ per page.

Howard, John P.
1973 UNITED STATES V. WASHINGTON: a Last Stand for the Indian? paper from the Indian Legal Problems Seminar, University of Washington School of Law.

See Holte (1974) for information on how to obtain copies of this paper.

Hyde, Frederick W., Jr.
1975 Treaty Hunting and Fishing Rights of the Klamath Indians. paper from the Indian Legal Problems Seminar, University of Washington School of Law.

See Holte (1974) for information on how to obtain copies of this paper.

Jakeman, A.H.
1963 Indian Rights to Hunt for Food. Canadian Bar Journal 6:223-227.

An early discussion of Native American hunting rights under Canadian law. The author examines several inconsistencies in the legal interpretation of the law, and predicts, sucessfully it turns out, that the question of Native American fishing/ hunting rights will become more pressing in the future.

Johnson, Ralph W.
1972 The States Versus Indian Off-Reservation Fishing: a United States Supreme Court Error. Washington Law Review 47:207-236.

Provides a synthesis of the legal arguments, pro and con,

concerning Native American off-reservation fishing rights. Indicates that the U.S. Supreme Court has reiterated that states have the power to regulate such fishing; points out that the Court has not provided a legal basis for such power. Briefly examines the judicial interpretation of treaties and investigates treaty law as it pertains to off-reservation fishing. Describes the manner in which states assumed, without legal justification, the power to regulate Native American off-reservation fishing.

La Clair, Leo
1971 Muckleshoot Fishing Rights Question. paper from the Indian Legal Problems Seminar, University of Washington School of Law.

Available via interlibrary loan from the University of Washington Law Library or from Professor Ralph Johnson (address: U of W School of Law, mail stop: JB-20, Seattle, WA. 98105) for 6¢ per page.

Lee, Robert
1966 Dick Gregory Goes Fishing. The Nation 202(17):487-489.

Describes the fish-in at Frank's Landing on the Nisqually River, during which Dick Gregory was arrested for fishing without a license. Briefly recounts the background of the controversy and suggests that three steps be taken: 1. undertake a comprehensive

study of Northwest fish conservation problems, 2. initiate a state court test case, and 3. reorganize the BIA to include Indian Representation.

McLoone, John J.
1968 Indian Hunting and Fishing Rights. Arizona Law Review 10:725-739.

Chronicles recent (1968) cases concerning Native American fishing/hunting rights, both on- and off-reservation. Concludes that a balance has been obtained for off-reservation fishing so that "... states need not fear the decimation of their fish population ... and at the same time it preserves for the Indian more extensive rights than non-Indians enjoy." Suggests that such a balance or compromise should be worked out between individual states and Native American tribes for on-reservation fishing.

Meyer, William
1971 Native Americans: the New Indian Resistence. New York: International Publishers.

Chapter 7 briefly discusses Native American fishing/hunting rights; specifically notes the problems faced by the Chippewas and the Northwest Coast Tribes in securing and maintaining treaty rights.

Paulson, Michael I.
1974 Indian Regulation of Non-Indian Hunting and Fishing. Wisconsin Law Review 1974:499-523.

Provides an analysis of the jurisdictional relationship between federal, state, and tribal governments concerning the regulation of on-reservation fishing/hunting. Examines those Congressional enactments which reinforce the regulatory powers of tribal governments and limit the powers of state regulatory agencies.

Phillips, Richard G., Jr.
1972 Indian Fishing Rights. Willamette Law Journal 8:248-260.

Discusses current law and court cases which bear upon the law pertaining to Native American fishing/hunting rights. Also examines the necessary and indispensible tests. Suggests that judicial responsibility is twofold: 1. to determine the "quantum of rights secured ..." by treaties, and 2. to insure that the states' game and fish management programs recognize those rights. Implies that as long as fishing regulations grant Native Americans an equitable share of the fish than the regulations are legal.

Rosenberg, Milton D.
1975 Indian Law - Tribal Off-Reservation Jurisdiction. Wisconsin Law Review 1975:1221-1251.

Examines the significance of the Settler decision (507 F. 2d 231), which represents a precedent on the subject of tribal powers, as the case establishes that a tribe's governing powers are not limited to territory within the reservation. Rosenberg dicusses the use of treaties as the basis for the extended jurisdiction and analyzes the impact of the Settler decision on the fishing rights dispute between Native Americans and the state of Washington.

Sanders, D.E.
1974 Indian Hunting and Fishing Rights. Saskatchewan Law Review 38:45-62.

Examines the Canadian federal law as well as provincial law concerning Native American fishing, hunting, and trapping rights, both on and off the reservation. In addition, the National Resources Transfer Agreements are discussed, as are the rights of Eskimos and non-status Native Americans.

Suagee, Mark A.
1973 The Creation of an "Indian Problem": Nisqually and Puyallup Off-Reservation Fishing. MA thesis, University of Washington, Seattle.

Provides a brief description of traditional Nisqually and Puyallup culture and discusses the place of fishing within those cultures. Analyzes Native American fishing rights from

aboriginal times to the present (1973). Summarizes the position of Washington state Department of Game and Department of Fisheries officials concerning Native American off-reservation fishing. Investigates the social impact of the dispute. Documents the social/cultural change which has occured among the tribes due to pressure and harrasment by state officials. Includes a full text of the Treaty of Medicine Creek, the Puyallup Tribe fishing regulations and the Nisqually Tribe fishing regulations.

Tax, Sol
1968 American Anthropological Symposium on American Indian Fishing and Hunting Rights, Seattle Washington. Northwest Anthropological Research Notes 2(2):1-43.

Transcript of a panel discussion with anthropologists, biologists, economists, government officials and Native Americans on the subject of Native American fishing/hunting rights.

United States. Congress. House. Merchant Marine and Fisheries Committee.
1975 Hearings before the Subcommittee on Fisheries and Wildlife Conservation and the Environment.

Pages 411-419 includes a statement by the Yakima Tribe as well as testimony from individual Yakima concerning off-reservation fishing rights.

United States. Congress. Senate. Interior and Insular Affairs Committee.
1964 Hearings before the Subcommittee on Indian Affairs on S.J. 170 and 171, Indian Fishing Rights.

Consists of statements from a wide range of individuals and groups concerning S.J. 170 and 171, which were Senate resolutions designed to grant states the right to regulate Native American fishing.

United States. Congress. Senate. Interior and Insular Affairs Committee and Commerce Committee.
1974 Hearings on the Nomination of Lynn A. Greenwalt to the Director of the U.S. Fish and Wildlife Service.

Includes a statement of the Northwest Indian Fisheries Commision as well as statements from various individuals. The Boldt decision and an analysis of that decision by the Library of Congress Congressional Research Service is also included.

United States. Office of Indian Affairs. Division of Forestry and Grazing.
1942 Report on Source, Nature and Extent of the Fishing, Hunting, and Miscellaneous Related Rights of Certain Indian Tribes in Washington and Oregon, Together with Affidavits Showing Location of a Number of Usual and Accustomed Fishing Grounds and Stations. Los Angeles, 483pp.

Unable to obtain for annotation.

Wallen, Woodrow
1970 Indian Hunting and Fishing Rights: Northwest Developments. paper from the Indian Legal Problems Seminar, University of Washington School of Law.

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